

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Thomas SALUTZKI

Serial No.: 10/518,702

Filed: December 20, 2004

For: Drive Device for Opening or Closing a Door or
Similar

Examiner: Williams, Thomas J.
Group Art: 3683

Mail Stop **Appeal Brief - Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF

SIR:

This is appellant's Reply Brief, pursuant to 37 C.F.R. § 41.41 in response to the Examiner's Answer mailed on August 14, 2008 in the above-identified application.

The Examiner's Answer makes new points of argument within section (10) Response to Argument.

In the section (10) Response to Argument, starting at page 7, line 5, of the Examiner's Answer, the Examiner indicates that the only significant difference between the instant invention and the prior art is the process by which the structure is achieved. However, independent claim 9 expressly recites "the toothed rack is made of metal and is embedded in the piston." The prior art submitted by the Examiner discloses only a metal rack which is attached to

a piston after the two components have been separately manufactured. There is a specific structural difference in that the rack disclosed by the prior art cited by the Examiner fails to disclose, teach or suggest that the rack is embedded in the piston.

In the last 6 lines of page 7 of the Examiner's Answer, the Examiner indicates that the specification fails to teach a unique or an unexpected result for the limitation "wherein the toothed rack is made of metal and is embedded in the piston by molding the polyoxymethylene plastic around the rack so that the rack and the piston form a one-piece element." Further, the Examiner alleges that the failure to indicate unexpected or unique results for that limitation indicates that the limitation is obvious. Applicant notes that this is not the test for patentability and that, as described above, structural differences are claimed, i.e., rack embedded in the piston, which are not disclosed, taught, or suggested by the cited prior art.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that appellants' claims are not anticipated by and are, therefore, patentable over the art of record, and the Examiner's rejections should be reversed.

Respectfully submitted,
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